

DEPARTMENT OF LAND AND NATURAL RESOURCES

**Adoption of Chapter 13-280
Hawaii Administrative Rules**

October 31, 2002

SUMMARY

Chapter 13-280, Hawaii Administrative Rules, entitled "Rules Governing General Procedures for Inadvertent Discoveries of Historic Properties During a Project Covered by the Historic Preservation Review Process", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 280

RULES GOVERNING GENERAL PROCEDURES FOR INADVERTENT
DISCOVERIES OF HISTORIC PROPERTIES DURING A PROJECT
COVERED BY THE HISTORIC PRESERVATION REVIEW PROCESS

§13-280-1	Policy and purpose
§13-280-2	Definitions
§13-280-3	Procedure for inadvertent discoveries
§13-280-4	Proceeding with the project in the immediate vicinity of the historic property
§13-280-5	Penalty

§13-280-1 Policy and purpose. The inadvertent discovery of a historic property, other than a burial site, found after an archaeological assessment or inventory survey needs to be addressed in all mitigation plans. This chapter provides an expedited process to handle these discoveries.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains

and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Mitigation plan" means the plan setting forth appropriate treatment of historic properties, burial sites or human skeletal remains.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-280-3 Procedure for inadvertent discoveries.

(a) The procedure to handle a discovery of a historic property, other than a burial site, during the course of work on a project which has already gone through the historic preservation review process, is as follows:

- (1) Halt construction in the immediate area and do not disturb the historic property any further. No item shall be moved from the ground at the discovery location without the SHPD's approval, to prevent damage to the historic property.
- (2) Notify the SHPD as soon as possible.
- (3) The SHPD shall gather sufficient information to evaluate the significance of the historic property. This may be done by:
 - (A) A field check of the site by SHPD staff;
 - (B) A field check by an archaeologist hired by the person or agency undertaking the project; or
 - (C) SHPD gathering of oral and written information.
- (4) The SHPD and the agency or person undertaking the project shall evaluate all information to determine if a significant historic property has been discovered.
- (5) If the property is deemed significant, an appropriate mitigation plan shall be jointly developed by the SHPD and agency or person undertaking the project. The mitigation plan shall specify the form of mitigation and shall briefly itemize a scope of work. The plan may not be written. If the historic property is deemed significant under criteria in paragraph 13-275-6(b)(5) or 13-284-6(b)(5), the SHPD, agency or person undertaking the project shall initiate the consultation process by consulting with

representatives of the relevant ethnic group and consider their comments when developing the mitigation plan.

- (6) The agency or person undertaking the project shall execute the mitigation plan. The SHPD shall verify the execution of the mitigation plan. In cases of archaeological data recovery, an archaeological data recovery report shall be prepared in accordance with the standards set forth in chapter 13-278, and submitted to SHPD for review and approval.

- (7) Any collections, excluding human remains, recovered from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) For inadvertent discoveries made after an archaeological assessment or inventory survey and prior to construction, the procedure enumerated in subsection 13-280-3(a) shall be followed except for step one.

(c) After notification of the SHPD of the discovery, mitigation plan decisions shall be made within five working days or by a mutually agreed upon date. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-4 Proceeding with the project in the immediate vicinity of the historic property. The project may proceed in the area of the inadvertently discovered historic property when:

- (1) The SHPD verifies the execution of the mitigation plan;
- (2) The SHPD verifies in writing that the archaeological data recovery fieldwork is completed, with the condition that the report and final disposition of collections shall follow as per the mitigation plan; or
- (3) The SHPD verifies in writing that interim protection measures are in place for sites to be preserved, with the condition that the final preservation plan for the site will follow as per the mitigation plan.

[Eff
§§6E-3, 6E-7, 6E-8, 6E-42)] (Auth: HRS §6E-3) (Imp: HRS

§13-280-5 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws.
[Eff
§§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)] (Auth: HRS §6E-3) (Imp: HRS

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-280, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-280 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed